IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 5898 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE D.H.WAGHELA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

HARSHADBHAI N PATEL

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Misc.Application No. 5898 of 1997

MR AD SHAH for Petitioner No. 1-4

MR MA BUKHARI APP for Respondent No. 1

NOTICE SERVED BY DS for Respondent No. 2

CORAM : MR.JUSTICE D.H.WAGHELA

Date of decision: 04/10/2002

ORAL JUDGEMENT

By this application invoking the powers of this Court under Section 482 of the Criminal Procedure Code the petitioners who are original accused nos.3, 5, 6 and 8 have prayed for quashing the proceedings qua themselves and original accused no.7 of Criminal Case No.1703 of 1996 pending in the Court of the learned Judicial Magistrate, First Class at Kadi. The original complaint in the said Criminal Case no.1703 of 1996 is filed by the Food Inspector alleging offences under Section 7(1) and 7(5) punishable under the provisions of Section 16(1)(a)(i) of the Prevention of Food Adulteration Act, 1954. Among the accused persons, accused no.1 is joined as the vendor and accused no.2 is joined as producer and the alleged offence is in respect of adulteration of milk.

2 After going through the entire text of the complaint, it was submitted by the learned counsel Mr A.D.Shah and conceded by the learned APP Mr Bukhari that not a word or any specific averment implicating the petitioners and the original accused no.7 was found in the complaint and therefore the conclusion was inescapable that the original accused nos.3 to 8 were joined as parties only as Directors of the accused no.2, as stated in the cause title of the complaint. It could also not be disputed that whereas the accused no.1 and 2 are, by their addresses, located in the industrial area of Kadi, the original accused nos.3 to 8 were, according to their addresses located in far off places like Mumbai, Bardoli and Ahmedabad. It is stated in the petition and was argued that original accused no.8, the petitioner no.4 herein, is a practising advocate dealing with company matters and was appointed as Director in view of his expertise in company law. Thus, bare reading of the complaint suggests that the original accused nos.3 to 8 are joined as accused persons and consequently summoned by the learned Judicial Magistrate, First Class by the impugned order below the complaint, only on the basis of the fact that they happened to be the Directors of original accused no.2 and no allegation or averment whatsoever was found against them in the body of the complaint.

3 The learned counsel Mr Shah vehemently argued on behalf of the petitioners that even assuming that no person was nominated to be in-charge of and responsible for the company for conduct of its business as envisaged in Section 17(1)(a)(i) of Prevention of Food Adulteration Act, 1954 all the Directors cannot be presumed to be in-charge of and responsible to the company for the conduct of its business; nor can they be presumed to be

guilty of consent, connivance or negligence as envisaged in sub-section (4) of Section1 7 of the Act, and more particularly, in absence of even a bare allegation in the complaint. It was on that basis submitted that the process was issued by the learned Judicial Magistrate, without application of mind and the petitioners were required to be relieved of the agony of facing the prosecution. It was further submitted that in the peculiar facts and circumstances of this case, there cannot be pre-charge evidence and no stage for discharging the accused at any stage of the trial.

4. The learned counsel for the petitioner relied upon the judgement of the Honourable Supreme Court in MUNICIPAL CORPORATION OF DELHI Vs. RAM KISHAN ROHTAGI AND OTHERS [AIR 1983 SC 67] and pointed out the observations in paragraph 15 as under:-

"So far as the Directors are concerned, there is not even a whisper nor a shred of evidence nor anything to show, apart from the presumption drawn by the complainant, that there is any act committed by the Directors from which a reasonable inference can be drawn that they could also be vicariously liable. In these circumstances, therefore, we find ourselves in complete agreement with the argument of the High Court that no case against the Directors (accused Nos 4 to 7) has been made out ex facie on the allegations made in the complaint and the proceedings against them were rightly quashed."

It is also observed by their Lordships in the following paragraphs that there are ample powers for the Court to take cognizance and add any person not being an accused before it and when the proceedings were quashed against certain accused persons, it would not prevent the trial Court from exercising its discretion if it were fully satisfied that a case for taking cognizance against them was made out on the additional evidence led before it.

5 The judgement of the Supreme Court in KPG NAIR V. M/S JINDAL MENTHOL INDIA LIMITED [2001 SCCrR 27]was also relied upon in support of the submission that a person other than the company can be proceeded against under similar provisions only if that person is in-charge of and responsible to the company for the conduct of its business. It is clearly observed in that judgement that the words indicating essential ingredients for fastening the vicarious liability might not be incorporated in a

complaint as magic words but it cannot also be disputed that substance of the allegations read as a whole should answer and fulfill the requirements of the ingredients of the provisions for being proceeded against.

6 The learned APP submitted on behalf of the respondents that the trial Court was fully empowered to discharge or acquit the petitioners after leading of the evidence and this Court should not exercise the extraordinary powers under Section 482 which are supposed to be exercised only in the rarest of rare cases. The learned APP relied upon the celebrated rules and guidelines laid down in STATE OF HARYANA AND ORS. Vs. CH. BHAJAN LAL AND ORS. [1992 AIR 604] and the subsequent cases. However, in view of the facts briefly narrated hereinabove and the ratio of the judgements of the Supreme Court directly applicable in the facts of the present case, this appears to be a fit case in which the exercise of the power under Section 482 would be called for and fully justified.

7 The learned counsel for the petitioners further submitted that the original accused no.7 was staying in the US and, therefore, could not join as a co-petitioner in this petition. However, as per the ratio laid down by the Supreme Court in STATE OF U.P. v. R.K. SRIVASTAVA [AIR 1989 SC 2222] the prosecution against him can and ought to be also quashed insofar as same considerations and grounds apply in his case.

8 In the facts and for the reasons discussed hereinabove, the petition is allowed and rule is made absolute to the extent that Criminal Case No.1703 of 1996 pending in the Court of the learned Judicial Magistrate, First Class at Kadi, as far as it concerns the original accused persons nos.3, 5, 6, 7 and 8 shall stand quashed. Since the proceedings of the said Criminal Case was stayed during the pendency of this petition and the petition is now being disposed, the trial of the Criminal Case No.1703 of 1994 shall be given due priority as far as other accused persons are concerned. There shall be no order as to costs in the facts and circumstances of the case.

[D.H. Waghela, J.]
(mohd)